

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON McCOY,

No. C 09-4768 SI (pr)

Plaintiff,

**ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL**

v.


MIKE EVANS, warden; et al.,

Defendants.

Plaintiff has requested that counsel be appointed to assist him in this action. A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id. Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915(e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident. The request for appointment of counsel is DENIED. (Docket # 22.) In light of the possibility that plaintiff was waiting for this ruling before beginning work on his opposition to defendants' motion to dismiss, the court now resets the deadlines on defendants' motion to dismiss: Plaintiff must file and serve his opposition to the motion to dismiss no later than **February 18, 2011**. If defendants wish to file a reply brief, the reply brief must be filed and served no later than **March 4, 2011**.

IT IS SO ORDERED.

Dated: January 11, 2011


SUSAN ILLSTON
United States District Judge